

STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on September 17, 2015
Sacramento, California

PRESENT:

Art Carter, Chair
Ed Lowry, Member
Judith Freyman, Member
Han Ha, Interim Executive Officer
Jeff Mojcher, Chief Counsel
Ursula Clemons, Presiding Administrative Law Judge
Neil Robinson, Presiding Administrative Law Judge
Autumn Gonzalez, Industrial Relations Counsel
Aaron Jackson, Industrial Relations Counsel
Lee Berlin, Staff Services Manager
Jeremy Smith, State Building and Construction Trades Council

MINUTES OF SEPTEMBER 3, 2015 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the September 3, 2015 Board meeting. Chair Carter seconded. The Board voted to approve the draft minutes of the September 3, 2015 Board meeting.

NEW BUSINESS:

(The Appeals Board hears and discusses new reports presented by staff.)

ACTION: No report.

OLD BUSINESS:

(The Appeals Board hears and/or discusses matters on a follow-up basis.)

ACTION: No report.

LEGISLATION:

(Review and discuss current legislation which may affect the Appeals Board)

ACTION: No report.

CHAIRPERSON'S REPORT:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

ACTION: Chair Carter plans to discuss the Bagley-Keene Act with attorneys at DIR to see if other agencies are addressing some of the issues mentioned in the recent Little Hoover Commission report.

BOARD MEMBERS' REPORTS:

(Hear reports from Board Members on activities and issues affecting the Appeals Board.)

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ACTION: Member Lowry attended a vendor workshop at the West Covina office with Journal Technologies. The purpose of the meeting was to show the West Covina team the progress on the OASIS project. Member Lowry reported that the Southern California staff is very enthusiastic about the project.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters)

OPERATIONS UPDATE:

ACTION: Interim EO Ha reported that she will take some leave time in early 2016. She will be meeting with Chair Carter and the management team to ensure all projects are reassigned during her absence.

STAFF REPORTS:

(Reports from the Presiding ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

OASIS PROJECT:

ACTION: Business Lead Robinson said that next week the OASIS development team will begin designing the calendaring and scheduling functions.

RULEMAKING:

ACTION: Counsel Gonzalez reported that she believes the Director signed off on our regulations packages and that they are now at the Labor and Workforce Development Agency for review.

LITIGATION UPDATE:

ACTION: The Board has received an opening brief for a case currently in the Appeals Court. The Legal Unit is working on two briefs due this month for cases currently in Superior Court. The Board asked questions about the timelines involved in court cases.

Any matter not completed at this meeting may be continued to subsequent meetings. If the closed session agenda is not completed on the scheduled day, the closed session will continue from day to day until completion and adjournment.

PUBLIC COMMENT:

(Public comment will be entertained during discussion of each agenda item of the Open Meeting.)

ACTION: Jeremy Smith thanked the Board for moving its meetings to Thursday. He said he and other stakeholders would be interested in any Board discussions pertaining to the Bagley-Keene Act.

The Board recessed to its closed session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

CONTRACTORS WARDROBE, INC., 14-R4D3-1116

ACTION: The Board took no action on this matter.

DAVIDSON ENTERPRISES, INC., 14-R4D7-3738 THROUGH 3743

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

INTERNATIONAL PAPER COMPANY, 15-R2D5-0315 AND 0316

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

PETITIONS FOR RECONSIDERATION:

SAVANT CONSTRUCTION, INC., 14-R3D1-3021

ACTION: Member Lowry moved that the Board vote to deny this Petition for Reconsideration. Member Freyman seconded. The Board voted to deny this Petition for Reconsideration.

SYAR INDUSTRIES, INC., 13-R5D1-1876 THROUGH 1880

ACTION: Member Lowry moved that the Board vote to accept the Legal Unit's recommendation to deny this Petition for Reconsideration as amended. Member Freyman seconded. The Board voted to accept the Legal Unit's recommendation to deny this Petition for Reconsideration as amended.

DENIAL OF PETITION FOR RECONSIDERATION (DRAFT):

CHARLES PANKOW BUILDERS, LTD., 13-R4D1-1759

ACTION: This matter will be considered at the next Board meeting on October 1.

NATHAN AHDOOT dba SUMMITRIDGE BEVERLY HILLS LLC., 12-R4D1-9154

ACTION: Member Lowry moved that the Board vote to approve this draft

Denial of Petition for Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature.

ORDER ON PETITION FOR COSTS:

ECHO ALPHA INC., JOHN STAGLIANO, INC., EVIL ANGEL PRODUCTIONS, AND JOHN STAGLIANO, INC. DBA EVIL ANGEL VIDEO, 15-R3D1-1862

ACTION: Member Lowry moved that the Board approve this Order on Petition for Costs of an Administrative Law Judge. Member Freyman seconded. The Board voted to approve this Order on Petition for Costs of an Administrative Law Judge.

ORDERS DISMISSING APPEAL:

PENNYSAVER USA PRINTING, LLC, 15-R3D3-1327 THROUGH 1329
SPEED PLUMBING 2000, INC., 15-R4D1-1694 AND 1695

ACTION: Member Lowry moved that the Board approve these Orders Dismissing Appeal from Administrative Law Judges. Member Freyman seconded. The Board voted to approve these Orders Dismissing Appeal from Administrative Law Judges.

T & R CONSTRUCTION GROUP, 14-R4D3-4120 AND 4121

ACTION: Member Lowry moved that the Board approve this Order Dismissing Appeal from an Administrative Law Judge. Member Freyman seconded. The Board voted to approve this Order Dismissing Appeal from an Administrative Law Judge.

AMENDMENT TO ORDER:

SWIFT PORK COMPANY (previously JBS USA LLC), 15-R4D4-0704 AND 0705

ACTION: Member Lowry moved that the Board approve this Amended Order of an Administrative Law Judge. Member Freyman seconded. The Board voted to approve this Amended Order of an Administrative Law Judge.

MATTERS INVOLVING LATE APPEALS:

(These are matters such as orders dismissing appeal, orders granting leave to file late appeal and orders denying leave to file late appeal)

MATTERS HELD OVER FROM PREVIOUS MEETINGS:

(If the Board is unable to conclude its deliberations and/or if any matter(s) is (are) put over from a previous meeting, they will be further discussed.)

MATTERS PENDING RECONSIDERATION:

(If the Appeals Board orders reconsideration of an Order or Decision, it reviews the record and then affirms, rescinds, alters or amends the Order or Decision being reconsidered.)

ACTION METAL RECYCLING, INC., R2D2-1125 THROUGH 1126
B.A.R.T., 11-R2D2-3137 THROUGH 3139 (ER)

ACTION: Member Lowry moved that the Board vote to approve this draft Decision After Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Decision After Reconsideration for signature.

CHEVRON U.S.A. INC., 13-R6D3-0655 THROUGH 0662
CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038
CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364
DIONYSUS DREAM INC., DBA NEWPORT MESA CARWASH & SERVICE,
15-R6D5-9087
ECHO ALPHA INC. ET AL, 14-R3D1-0802 THROUGH 0804
EKEDAL CONCRETE, INC., 13-R3D1-0131 THROUGH 0133
GOLDEN STATE WARRIORS, 15-R1D4-9060
HERMAN WEISSKER, INC., 13-R3D1-3279
L & S CONSTRUCTION, INC., 10-R3D1-1821 AND 1822

McCARTHY BUILDING CO., INC., 11-R4D2-1706 AND 2406
McCARTHY BUILDING CO., INC., 12-R1D4-3458

ACTION: The Board discussed these matters.

GONZALO OLASCOAGA DBA GONZALO OLASCOAGA, 13-R6D5-2097
AND 2098

ACTION: The Board discussed this matter.

NATIONAL DISTRIBUTION CENTERS, LP, 12-R6D2-0391
TRI-STATE STAFFING, 12-R6D2-0378

ACTION: The Board discussed these matters.

MCM CONSTRUCTION, INC., 13-R1D2-3851 THROUGH 3854
SIERRA FOREST PRODUCTS, 09-R2D5-3979
UNITED PARCEL SERVICE, 14-R2D1-1779
W.A. RASIC CONSTRUCTION, INC., 13-R3D1-2952

LEGISLATION:

PENDING LITIGATION:

(If the Division of Occupational Safety & Health or the Employer disagrees with a decision after reconsideration or a denial of a petition for reconsideration, either one or both parties may apply to the California Superior Court for a writ of mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

SUPERIOR COURT:

1. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
2. FLATIRON CONSTRUCTION CORP, 34-2012-80001029 (10-R4D1-2789)
3. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
4. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
5. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
6. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
7. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219
AND 0220)
8. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
9. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258
(05-R2D4-2650 AND 2651)
10. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
11. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
12. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
13. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
14. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
15. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-
R4D5-0459 & 0460)
16. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)
17. DSS COMPANY DBA KNIFE RIVER CONSTRUCTION, 34-2013-80001575
(12-R5D1-337)
18. HILL CRANE SERVICE, INC., 34-2014-80001730 (12-R4D1-2475)
19. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 34-
2014-80001749 (2008-R2D1-3414 THROUGH 3418)

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20. SHIMMICK-OBAYASHI, 34-2014-80001750 (08-R3D3-5023 THROUGH 5025)
21. TAD VAN NGUYEN, CPF-14-513482 (13-R1D1-9163)
22. BRUNTON ENTERPRISES DBA PLAS-TAL MFG CO., 34-2014-80001817
(09-R6D2-2238 ~ 2241)
23. WEST VALLEY CONSTRUCTION, INC., 34-2014-80001832 (12-R2D5-3526)
24. BARNARD IMPREGILO HEALY JV, CPF-14-513697 (14-R5D1-9013)
25. TL PAVLICH CONSTRUCTION, INC., BS14-9660 (11-R3D6-1303
THROUGH 1310)
26. DAVIS DEVELOPMENT CO., 34-2014-80001892 (10-R3D1-3360
THROUGH 3362)
27. FEDEX GROUND PACKAGING SYSTEM, INC., CIVDS1415696 (13-R3D1-1220)
28. KEY ENERGY SERVICES, INC., S-1500-CV-283958, EB (13-R4D3-2239 ~ 2242)
29. KDTD, INC. DBA KD DEVELOPMENT, INC., 37-2015-00003550-CU-WM-CTL (14-
R3D2-1935 & 1936)
30. HHS CONSTRUCTION, 34-2015-80002052 (12-R3D2-0492 THROUGH 0497)
31. MARIA DE LOS ANGELES COLUNGA dba MERCED FARM LABOR,
15CV-00945 (08-R2D1-3093 ~ 3098)
32. STANISLAUS FOOD PRODUCTS CO., 34-2015-80002087 (13-R2D4-0572 ~ 0574)
33. OLDCASTLE PRECAST, INC., 34-2015-80002167 (13-R3D3-0583)

APPELLATE COURT:

1. XL CONSTRUCTION, C074514, 34-2009-80000300 (08-R1D2-1191
THROUGH 1193)
2. AC TRANSIT, A142799, RG13-687314 (08-R1D4-0135)
3. THYSSENKRUPP ELEVATOR CORPORATION, C077115, 34-2013-80001456
(11-R2D1-2217 ~ 2219)
4. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, C078953,
34-2011-80000965, (10-R6D2-0188 THROUGH 0191)

ORDERS OF ADMINISTRATIVE LAW JUDGES:

(Written order issued by an Administrative Law Judge after a pre-hearing conference in which the Division of Occupational Safety & Health and the Employer agree to settle an appeal without a hearing. The Board Members review the order and decide if they will reconsider or remand the issued order.)

A C FRAMERS INC., 15-R2D3-2687
ALL SOURCE PPS, INC., 15-R1D4-2685
AMERICAN STYRENICS LLC, 15-R3D5-0402 AND 0403
ANDERSON LA, 15-R4D1-1029 THROUGH 1031
APOLLO SOUTHWEST, 15-R4D4-0027 AND 0028
BAR ALE, INC., 15-R2D1-0905 THROUGH 0907
EDDIE BARNES DBA EDDIE BARNES CONSULTING, 15-R6D5-1723
THROUGH 1727
BBG WIRELESS USA, INC., 14-R6D5-2361 THROUGH 2362
CITY OF OXNARD WASTEWATER DIVISION, 15-R4D4-1403
CONSTELLATION BRANDS, INC DBA MISSION BELL WINERY, 15-R2D5-0042
C. OVERAA & CO, 14-R1D4-4107
C S CONSTRUCTION, 15-R4D3-1245 THROUGH 1247
DEL SOL HARVESTING, INC., 15-R4D3-1625
ELK GROVE MILLING INC, 14-R2D1-3363
ELK GROVE MILLING INC, 13-R2D1-3802
FLATIRON ELECTRIC GROUP, INC., 14-R2D5-3171
FRANK GWERDER DAIRY, INC., 15-R2D4-0734
GATTUSO POOL CORPORATION, 15-R6D5-2755 AND 2756
GLEN RAGSDALE UNDERGROUND ASSOCIATES, INC., 15-R5D1-0121
WILLIAM GUENTHER, DC DBA FORT SUTTER CHIROPRACTIC, 15-R2D1-2555
HAYS CONSTRUCTION COMPANY, INC DBA HAYSCO, INC, 15-R2D1-0562
THROUGH 0565
HONEST PLUMBING AND ROOTER INC., 14-R4D3-2149 AND 2150
HONEYVILLE, INC., 15-R4D4-1211 THROUGH 1215
HOUS OF MERCEDES INC., 15-R6D5-2069 AND 2070
HUNDAL FARMS, INC., 14-R2D5-2281
IISCO, INC DBA VALLEY FLEET CLEAN, 14-R2D5-3677 AND 3678
JOSE AGUILAR DBA JOSE AGUILAR LANDSCAPING, 13-R4D1-3953 AND 3954
JSV FARM LABOR, INC., 14-R2D5-3622
JUAN BRIONES FLC, 15-R2D3-2732
K & G RANCHES, 14-R2D5-4178 AND 4179
LA HABRA PLATING CO., 15-R3D1-2564 THROUGH 2569
LEADPOINT, 14-R1D2-3620
NAPA VALLEY UNIFIED SCHOOL DISTRICT, 15-R1D5-0100
NOVA WEST INC, 15-R2D5-1899 THROUGH 1901
O. NELSON & SON INC., 14-R1D3-3591 AND 3592
ORANGE PAINTING, 15-R4D1-1194 AND 1195
PIN HSIAO & ASSOCIATES, LLC, 15-R2D4-0952 THROUGH 0954
POLY-AG CORP., 15-R3D2-1863 THROUGH 1866

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PRIME WHEEL CORPORATION, 15-R3D5-2268
RAYMOND SAN DIEGO, 15-R3D2-0535
R B PLASTERING, 15-R2D5-0972 THROUGH 0975
SIGN OF THE TIMES, 15-R4D1-0112 AND 0113
STEELEX INDUSTRIAL, INC, 15-R2D5-1227 AND 1228
SUNNY TILE & MARBLE, INC., 15-R6D5-2598
TEAMWORK HUMAN RESOURCES INC., 15-R2D3-2688
TEK SYSTEMS, INC., 14-R2D1-3697
TONY MACIAS TREE EXPERTS, 15-R4D1-0672 THROUGH 0674
TOTAL APPEARANCE EXHIBIT SERVICES, INC., 14-R2D5-1915 THROUGH 1917
TRI-SQUARE CONSTRUCTION INC, 15-R2D1-0826 AND 0827
VLOT BROTHERS, 14-R2D5-1683 THROUGH 1685
WINCO FOODS, LLC, 15-R2D1-2770

ACTION: Member Lowry moved that the Board approve these Orders of Administrative Law Judges. Member Freyman seconded. The Board voted to approve these Orders of Administrative Law Judges. Orders with asterisks are deemed approved as amended.

PERSONNEL:

(Issues regarding staff)

ACTION: The Board discussed personnel matters.

The Closed Session was adjourned at 12:19 and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its ACTIONS in the Closed Session, as indicated above. The meeting was adjourned at 12:20 p.m.